

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1847 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

HARAHADBHAI RATILAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner
MR LR PUJARI, A.G.P., for respondents no.1 to 3.
MR SUNIL C PATEL for Respondents No.4.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 28/04/97

ORAL JUDGEMENT

The petitioner has brought under challenge the impugned order of detention dated 2-2-1997 as also continued detention of the petitioner under the said order rendered by the respondent no.3 u/s 3 of the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act,

1980 (for short 'the Act').

2. The grounds of detention appear at annexure 'B' and they are dated 5-2-1997. They inter-alia recite that it has become necessary to detain the petitioner with a view to prevent him from indulging in the activities which would adversely affect maintenance of essential commodities such as kerosene. It is recited in the grounds that the petitioner has been carrying on business in superior imported kerosene (white) at Nadiad and Gandhidham along with his business of transport. It appears that the petitioner had sold 9,400 Liter of imported S.K.O. on 16-1-1997 to one Shrinath Traders, of 12, Arihunt Society, Vasana, as per the details set out in the grounds of detention. On inquiry, it was found that the said stock of imported kerosene was not purchased by the petitioner and false bills were prepared in the name of aforesaid Shrinath Traders. It has further been recited that the petitioner's concern in the name of S.B. Petroleum carrying on business at Nadiad purchased from Ashirvad Traders and Khetan Oil Traders of Gandhidham imported kerosene to the extent of 75,000 Liter. However, on inquiry it was found that the bills were obtained for diverting blue kerosene in the name of imported kerosene. It is then alleged that the petitioner is indulging in diversion of licenced kerosene by preparing bogus bills in the name of selected trader owned by Ashokbhai Patel as per the detailed particulars set out in para 4 (3) of the grounds of detention. Then there is a reference of the bogus bills for the stock of 11000 Liter of imported kerosene issued on 20-9-1996 under bill No.75 in the name of select traders. It has finally been alleged that the stock of kerosene contained in Tanker No.GTK 4681 alleged to have been weighed on 20-9-1996 and 12-10-96 was diverted from the Refinery to the United Catalyst Co. under the false bills in the name of Avsi Polymers instead of delivering kerosene contained in the said tanker on the aforesaid occasions to Shriji Corporation of Kapadvanj. It has therefore been concluded that the petitioner has indulged in diverting licenced kerosene in collusion with the persons named in the grounds of detention. The petitioner is therefore held to have committed breach of Section 3 of the Kerosene (Restriction On Use And Fixation Of Ceiling Prices) Order, 1993 and Clause 23 of the Gujarat Essential Commodities (Licence Control and Stock Declaration) Order, 1981 as also Condition No.4 of the Licence issued thereunder and thereby has committed breach of Section 3 of the Essential Commodities Act, 1955.

3. The petitioner has challenged the impugned order of detention as also petitioner's continued detention on the ground that the impugned order of detention suffers from total non-application of mind. In the grounds of detention the Detaining Authority has stated that the petitioner has committed breach of Section 23 of the Gujarat Essential Commodities (Licence Control and Stock Declaration) Order, 1981 and Condition No.4 of the Licence issued thereunder and thereby committed breach of Section 3 of the Essential Commodities Act, 1955. In fact the petitioner is not holding licence as alleged and therefore there is no question of committing breach of any condition of the Licence. It has been asserted by the petitioner that the petitioner is not licence holder and therefore the provisions of the said Order of 1981 would not be applicable to the petitioner and there is also no question of committing breach of any of the provisions of the said Order. It has therefore been submitted that subjective satisfaction of the Detaining Authority in passing the impugned order has been vitiated on account of such non-application of mind. In support of such a challenge against the impugned order as also petitioner's continued detention reliance has been placed on the decision of this Court rendered on 17-09-1993 in Special Criminal Application No.965/93 the case of Maganbhai Dalabhai Vadhi Vs. District Magistrate, Panchamahals at Godhara and three others (Coram S.M. Soni & S.D. Shah, JJ, (Per Soni, J.) Following observations from the aforesaid decision read before this Court might be reproduced.

"One of the grounds, amongst other grounds, supplied to the detenu for detention is that he has committed breach of the provisions of the Essential Commodities Act and thereby committed an offence under Sec. 7 of the said Act; and that it is not found fit to take action under a court of law because if such an action is taken, time is likely to be consumed and the detenu is likely to take injunction against such proceedings. The petitioner-detenu is not holding an authorisation to run a fair price shop under the provisions of the Essential Commodities Act. Action under the Essential Commodities Act can only be taken against the person who is authorised to run a fair price shop. Question of taking such action and cancelling the authorisation will only arise if the person has an authorisation to run fair price shop."

5. As stated above, admittedly the petitioner is not

holder of any licence under the aforesaid Control Order and he has no fair price shop of his own and to this extent the aforesaid decision of the Division Bench of the Court would apply for holding that there is non-application of mind on the part of the Detaining Authority.

6. As the petitioner would succeed on the aforesaid ground of challenge against the impugned order of detention as well as continued detention of the petitioner, no other ground of challenge against the impugned order of detention is necessary to be considered.

7. In the result, the petition is allowed and continued detention of the petitioner under the impugned order dated 2nd February, 1997 is held to be illegal and is hereby terminated. The petitioner - Harshadbhai R. Shah shall be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. There shall be no order as to costs.

-0-0-0-0-0-